

The June 17, 2015 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:02 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig Hiltz, Clerk (Not Present)
Mary Jane Coffey, Member
Susanne Murphy, Member
Timothy Foley, Associate Member

7:00 pm – Kosta Corporation – Case #5-15 (cont'd from 5/27/15) (Zuker, DeCelle, Coffey, Murphy & Foley)

Mr. Zuker read the public hearing notice for KOSTA CORPORATION, CASE #5-15 with respect to property located at 1049 Main Street, Walpole, MA and shown on the Assessors Map 33 and Lot No. 355, Central Business Zoning District.

The application is for:

A VARIANCE from Section 6-B (c) of the Zoning By-Laws to allow reduced rear yard setback from CBD 10' minimum (allowed) to 5'-0" as noted on the attached plan.

Mr. Zuker explained that this was a continuation from our May 27, 2015 public hearing. Welcome back.

Kevin Uniacke of UDA Architects representing the applicant said that he would like to submit new plans (added new plans to record).

Mr. DeCelle wanted to know how the vents on the roof were.

Mr. Uniacke said what we are showing is all of the existing equipment on the roof (first page) the one in the middle is the fan cool unit. We proposed putting a barrier in front of it. The barrier will be plywood, metal studs. It is the one shown on the center of the roof.

Ms. Murphy wanted to know what the other one was.

Mr. Uniacke said it is another fan. It does not have a compressor, it is just a fan.

Mr. DeCelle wanted to know where the power vents were coming from.

Mr. Zuker wanted to know if they were new.

Mr. Uniacke said that the vents are directly in front of them and they are existing vents. We are going to relocate them off the side to the rear of the building.

Ms. Coffey asked if the shrubbery is going to go up against the fence.

Mr. Uniacke said there is no new shrubbery.

Mr. Zuker wanted to know if the applicant had any more conversations with the church.

Mr. Uniacke said that they had a month long conversation prior to the first meeting and then they learned of the new objection on the night of the meeting.

Mr. DeCelle said dampening the sound of the vents with the barrier will help.

Mr. Zuker asked if there were any comments from the public.

(There were no comments from the public)

Ms. Murphy wanted to know why the Building Commissioner wrote the letter that the Board had received the day before.

Mr. Uniacke said his guess would be that the Building Commissioner had a meeting with the church and at that point the gentleman who was here had talked with the commissioner many times and was supposed to write a letter in favor of the project. There was a gentleman's agreement but then he didn't write the letter and my guess is that the Building Commissioner was upset about the gentleman coming in and opposing the Red Cherry proposal.

Mr. Zuker read both The Building Commissioner's letter and the Director of Community & Economic Development letter into the record. Mr. Zuker then went on to say if the building was not so close to the abutting property it would be a non-issue. If this was a residential structure it would be a Special Permit.

Mr. DeCelle added that you will not see the addition from the street.

Mr. Uniacke said they would paint the new addition the same color as the current building.

Mr. Zuker said that the applicant still needs to meet the requirements. The building is an odd shape.

Mr. Foley added that the noise the abutter was referencing is already there. The addition is not going to change the sound.

Mr. Zuker said the addition is reducing the non-conforming nature of the structure. It is making it less non-conforming in terms of the distance.

Ms. Coffey said we are sure the Church doesn't object.

Mr. Zuker said that they knew the meeting was tonight. No one is here to object.

Ms. Murphy added that the Church did not object to the project, he just had an issue with the pre-existing noise.

Donna Sidiropoulos the owner of Red Cherry said that the current noise does already exist and they are working to fix that.

Ms. Murphy wanted to know if the hours of operation were changing.

Ms. Sidiropoulos said no, the hours will stay the same. We are currently open Sunday- Thursday 11 a.m. – 9 p.m. and Friday & Saturday 11 a.m. – 10 p.m.

Mr. DeCelle wanted to know if the yogurt station would stay open during the winter as well.

Ms. Sidiropoulos said they would continue to serve frozen yogurt in the winter as well.

Mr. Zuker wanted to know if there were any other comments to add.

There being no other comments. A motion was made by Mr. DeCelle, seconded by Ms. Coffey to close the public hearing.

The vote was **5-0-0 in favor** of closing the Public Hearing. (Zuker, DeCelle, Coffey, Murphy & Foley voting)

A motion was made by Mr. DeCelle, seconded by Ms. Coffey, on behalf of the applicant to grant a Variance from Section 6-B (c) of the Zoning Bylaws to allow reduced rear yard setback from CBD 10' minimum (allowed) to 5' – 0" as noted on the attached site plan.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Coffey, Murphy and Foley voting); therefore the application for a **Variance** under Section 6-B(c) is hereby **granted**, subject to the following conditions:

CONDITIONS:

1. As stipulated by the application at the public hearing and as amended to conform with the variance being granted, construction shall be pursuant to the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, a 3 foot high acoustical barrier shown on the plan in front of the fan coil unit & powered vent unit both which generate noise shall be installed.
3. As stipulated by the applicant the hours of operation shall remain Sunday - Thursday 11 a.m. - 9 p.m. and Friday & Saturday 11 a.m. – 10 p.m.
4. This Variance shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

- 1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.***

The Board finds that owing to the circumstances related to the parcel, but not generally affecting the CBD in which it is located, that the unique triangular shape of this corner lot, as well as the shape and configuration of the pre-existing building significantly limits the Petitioner’s ability to expand.

- 2. *A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.***

The property is located in the Central Business District and it is promoting business which is what the purpose of the district is. The Board finds that a literal enforcement of the Bylaw would involve substantial financial hardship to the Petitioner in that the Petitioner needs to expand their business to remain viable.

- 3. *Relief may be granted without substantial detriment to the public good or nullifying or derogating from the intent or purpose of this bylaw.***

The Board finds that the proposed addition will not cause a substantial detriment to the public good. To make the business a year round business they need to expand. The Board finds that with the above listed conditions, the Variance may be granted without nullifying or derogating from the intent or purpose of this bylaw. In fact by granting the variance it will reduce the non-conformity of the building.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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A motion was made by Mr. DeCelle, seconded by Mr. Foley to adjourn the meeting at 7:29 p.m.

The vote was **5-0-0 in favor.** (Zuker, DeCelle, Coffey, Murphy & Foley voting)

Craig W. Hiltz

Clerk

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Minutes were approved on August 12, 2015.